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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,596	03/23/2004	Howard W. Bongratz	Y3.0173	2454
29438	7590	12/14/2005	EXAMINER	
MATHEW R. P. PERRONE, JR. 210 SOUTH MAIN STREET ALGONGUIN, IL 60102-2639			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 12/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/806,596

Applicant(s)

BONGRATZ, HOWARD W.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>14 June 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9 and 18-20, drawn to an adjustable height batch blender with filling and discharge means, classified in class 366, subclass 192.
  - II. Claims 10-17, drawn to a method of blending, classified in class 366, subclass 348.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method could be practice with a apparatus which does not have the combination of the "a filling means and a discharge means", but instead could just have a single opening.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mathew R. P. Perrone Jr. on 30 November 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9 and 18-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: "136".

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one mixing tool" must be shown or the feature canceled from the claims. New matter must not be entered.

8. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

9. Claims 2-9 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is lack of antecedent basis for “the agitator” recited in line 5 of claim 2. While “agitating means” is recited in line 3 of the claim, this is not sufficient antecedent basis for “the agitator”. It is unclear whether the sixth paragraph of section 112 is being invoked. Furthermore, in claim 5, line 5, the phrase “the agitating having” is unclear. Similarly, in claim 18, line 15, there is lack of antecedent basis for “the agitator”. While “agitating means” is recited in line 13 of the claim, this is not sufficient antecedent basis for “the agitator”. It is unclear whether the sixth paragraph of section 112 is being invoked. Furthermore, in claim 19, line 14, the phrase “the agitating having” is unclear.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-4 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bohle (US 5,090,815). Regarding claim 1, Bohle ('815) discloses a variable position batch blender assembly comprising a batch blender being movably mounted to a lift assembly (see col. 4, lines 56-59); the blender having a cover (6) and a receiver (2); and the blender having a filling means (see col. 6, lines 53-57) and a discharge means

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(22,23). While the claim discusses filling in a low position and discharging in a high position, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967). Regarding claim 2, the lifting assembly supports the blender (see Fig. 1; col. 4, lines 56-59); the batch blender has agitating means (3 and/or 3A) mounted in the receiver; the agitator has at least one tool (for example 53) secured thereto; and the receiver has a discharge mechanism (22,23) mounted therein. Regarding claim 3, the cover (6) releasably covers the receiver, the lifting assembly supports the receiver (see Fig. 1). Regarding claim 4, the discharge means (22, 23) is closeable and the cover is sealable (see col. 5, line 57 to col. 6 line 56). Regarding claim 18, Bohle ('815) discloses a variable position batch blender assembly comprising a batch blender being movably mounted with a hydraulic lift assembly (see col. 4, line 56-65); the blender having a cover (6) and a receiver (2); and the blender having a filling means (see col. 6, lines 53-57) and a discharge means (22,23); the lifting assembly supports the blender (see Fig. 1; col. 4, lines 56-59); the batch blender has agitating means (3 and/or 3A) mounted in the receiver; the agitator has at least one tool (for example 53) secured thereto; and the receiver has a discharge mechanism (22,23) mounted therein. While the claim discusses filling in a low position and discharging in a high position, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 5-9, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohle (US 5,090,815). The assembly of Bohle ('815) was applied to respective parent claims 4 and 18 above. Regarding claim 5, Bohle ('815) further discloses a discharge means (22,23) being positioned in the bottom portion of the receiver and the cover (6) closing a top of the receiver (see Fig. 1). An agitator (3) has mixing tools (51,52 and 53). Agitator 3A also has mixing tool (see Fig. 1). However, it is not expressly stated that at least one of the mixing tools is releasably secured. However, as seen in Fig. 1, the agitator shaft of 3A is segmented with two hubs corresponding to two pairs of mixing blades. This would have suggested tools which are removably secured to one of ordinary skill in the art. See also *In re Dulberg* 129 USPQ 348, 349 (CCPA 1961). Regarding claims 6-8, the assembly has first and second side arms (5,7) supporting the receiver from the sides; a top cross member (see Figs. 1-3) and first and second hydraulic lift assemblies (including 8 and 9; see col. 4, lines 56-65). Regarding claim 9, the receiver has an arcuate base (see Fig. 1) and the discharge means is a closable chute (22,23). While the claim discusses when the discharge chute is to be opened and closed, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine

itself" *In re Casey*, 152 USPQ 235 (CCPA 1967). Regarding claim 19, Bohle ('815) further discloses the cover (6) closing the receiver and being releasable to fill the receiver (see col. 5, lines 8-56); the lifting assembly supports the receiver (see Fig. 1); the discharge mechanism (22,23) is closable (see col. 5 line 57 to col. 6 line 52); the cover is sealable to the receiver (see col. 6, lines 53-57); the discharge mechanism is at the bottom of the receiver and the cover closes the top (see Fig. 1). However, it is not expressly stated that at least one of the mixing tools is releasably secured. However, as seen in Fig. 1, the agitator shaft of 3A is segmented with two hubs corresponding to two pairs of mixing blades. This would have suggested tools which are removably secured to one of ordinary skill in the art. See also *In re Dulberg* 129 USPQ 348, 349 (CCPA 1961). Regarding claim 20, the assembly has first and second side arms (5,7) supporting the receiver from the sides; a top cross member (see Figs. 1-3) and first and second hydraulic lift assemblies (including 8 and 9; see col. 4, lines 56-65).

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS